

SOAH DOCKET NO. 578-10-5350
TBVME DOCKET NO.

TEXAS BOARD OF VETERINARY	§	BEFORE THE
MEDICAL EXAMINERS, Petitioner	§	
	§	TEXAS BOARD OF
	§	
v.	§	VETERINARY MEDICAL
TODD MURPHY, D.V.M.,	§	
Respondent	§	EXAMINERS

FINAL DECISION AND ORDER

This matter was heard by the Texas Board of Veterinary Medical Examiners ("Board") in open meeting on the 13th day of December, 2010.

The Board finds that after proper and timely notice was given, the above-styled case was heard at the State Office of Administrative Hearings by an Administrative Law Judge on October 19, 2010. Respondent Todd Murphy did not appear. The Administrative Law Judge (ALJ) filed his proposal for decision on November 12, 2010 containing Findings of Fact and Conclusions of Law, and recommending that the Board suspend Respondent's license for a period of one year and require Respondent to complete continuing education in a specified field related to the practice of veterinary medicine that the Board deems relevant to Respondent's violations. This proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. Staff for the Board timely filed exceptions to the Administrative Law Judge's Proposal for Decision, and Respondent Todd Murphy was given the opportunity to reply. On December 3, 2010, the Administrative Law Judge responded to the Exceptions and made minor changes to the "Discussion" section of the Proposal for Decision.

The Board, after review and due consideration of the Proposal for Decision, the Petitioner's Exception to the Proposal for Decision, and the Administrative Law Judge's response to the Exception, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge contained in the Proposal for Decision and incorporates those Findings of Fact and Conclusions of Law into this Final Order as if such were fully set out and separately stated in this Final Order, with the exception of the modified Conclusions of Law and modified penalty set forth below.

A. Modified Conclusions of Law No. 6

Conclusion of Law No. 6 in the Proposal for Decision is modified and adopted to read as follows:

6. Based upon the above Findings of Fact, Respondent violated TEX. OCC. CODE §801.402 (16) and 22 TEX. ADMIN. CODE §573.22 by engaging in veterinary practices with respect to four different patients which were in violation of the Board's rules

of professional conduct. Respondent's repeated violations of the Board's rules represent a Class A violation under 22 TEX. ADMIN. CODE §575.25(a)(1)(H).

Reason for Modification:

In the "Discussion" section of the Proposal for Decision, the Administrative Law Judge found that "Respondent's actions constituted Class A violations" under 22 TEX. ADMIN. CODE §575.25(a)(1)(H). In Conclusion of Law No. 6, however, the Administrative Law Judge incorrectly cited the relevant Board rule as "22 TEX. ADMIN. CODE §575.25(H)," when no such provision exists. It is clear that the citation contained in Conclusion of Law No. 6 was a typographical error that requires correction to cite the intended Board Rule.

Moreover, the Administrative Law Judge wrote in Conclusion of Law No. 6 that "Respondent violated... 22 TEX. ADMIN. CODE §...575.25." In fact, 22 TEX. ADMIN. CODE §575.25 merely provides a recommended schedule of sanctions for violations of other provisions of the Board's Rules of Professional Conduct or the Veterinary Licensing Act. There was no conduct that violated 22 TEX. ADMIN. CODE §575.25.

The Administrative Law Judge's holding in Conclusion of Law No. 6 is thus an incorrect interpretation of 22 TEX. ADMIN. CODE §575.25. It is therefore appropriate for the Board to modify Conclusion of Law No. 6, in keeping with section 2001.058(e) of the Administrative Procedure Act. TEX. GOV'T. CODE § 2001.058(e)(1). The Board therefore ORDERS that Conclusion of Law No. 6 is modified as set forth above.

B. Modified Penalty in Conclusions of Law Paragraph 8:

The penalty for Respondent at the conclusion of the Conclusions of Law is modified to read as follows:

8. Based on the above Findings of Fact and Conclusions of Law, the Board will issue an order revoking Respondent's license.

Reason for Modification:

In the Proposal for Decision, the Administrative Law Judge stated, "Based on the above Findings of Fact and Conclusions of Law, the Board should issue an order suspending Respondent's license be suspended [sic] for a period of one year; and requiring Respondent to complete continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s)." The Board finds that the appropriate penalty is revocation of Respondent's license based on the conduct and violations in this case. The Board's guidelines authorize the Board to revoke a license, issue a penalty not exceeding \$5,000 for each violation per day, require continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation, require quarterly reporting certifying compliance with board orders, or require the licensee to sit for and pass the Texas State Board Licensing Examination. 22 TEX. ADMIN. CODE §575.25(a)(3).

The administrative record in this matter demonstrated, and the Administrative Law Judge found in his Proposal for Decision, that Respondent violated Board Rules 573.22 repeatedly, and that the violations represented a Class A violation. 22 TEX. ADMIN. CODE §§ 573.22, 575.25(a)(1)(H). The sanction assessed by the Board falls within the statutorily authorized parameters for a Class A violation. The Board finds that the more serious sanction of revocation is appropriate based upon the testimony in the record of the repeated nature of Respondent's violations as set out in Findings of Fact paragraphs 3-30 and the likelihood of recurrence; the economic harm to the clients; the overall gravity of the violations (as set out in Finding of Fact No. 30); and the Administrative Law Judge's finding that Respondent engaged in veterinary practices that are violative of the Rules of Professional Conduct. The Board therefore finds that the revocation penalty is necessary to prevent Respondent from future violations of the standard of care.

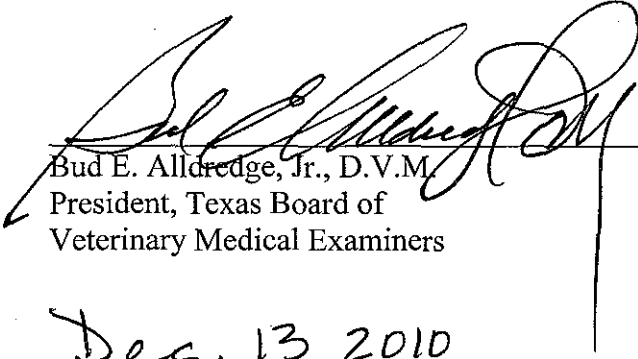
Further, the penalty proposed by the Administrative Law Judge would set a precedent regarding the use of the penalty guidelines for a Class A violation that the Board finds is inconsistent with the intent and plain language of the guidelines. As such, the Administrative Law Judge did not properly apply or interpret agency policy, which supports modification of the Conclusion of Law pursuant to section 2001.058(e) of the APA. 10 TEX. GOV'T. CODE § 2001.058(e)(1).

In all cases, the Board has the discretion to impose the penalty that best accomplishes the Board's enforcement goals. No statutory authority exists in the Veterinary Licensing Act or in the Texas Government Code for an Administrative Law Judge to impose a final sanction. The Board therefore ORDERS that the penalty is modified as set out above.

C. All other Findings of Fact and Conclusions of Law contained in the Proposal for Decision that are not expressly modified by this Order are hereby ADOPTED and incorporated by reference in full in this Order.

ORDER

NOW, THEREFORE, it is ORDERED that Respondent's license is REVOKED.



Bud E. Alldredge, Jr., D.V.M.
President, Texas Board of
Veterinary Medical Examiners

Dec. 13, 2010
Date Entered